

## Article 28

### Board of Zoning Appeals

#### Section 28.01 Establishment

- (a) **County of La Porte.** The county Board of Zoning Appeals, hereinafter called “the BZA,” exists as an advisory BZA under the authority of I.C. 36-7-4-901 and any amendments thereto. The BZA shall consist of five (5) voting members, who shall be appointed and shall hold office for such terms as are provided by I.C. 36-7-4-902, as amended.
- (b) **City of La Porte.** The Advisory Board of Zoning Appeals for the city of La Porte shall consist of one division, as provided for in IC 36-7-4-901 and shall be hereinafter called “the BZA.” The BZA shall consist of five (5) members who shall be appointed and shall hold office for such terms as are provided by IC 36-7-4-902 et seq.
- (c) **City of Michigan City.** The Advisory Board of Zoning Appeals for the city of Michigan City shall consist of one division, as provided for in IC 36-7-4-901 and shall be hereinafter called “the BZA.” The BZA shall consist of five (5) members who shall be appointed and shall hold office for such terms as are provided by IC 36-7-4-902 et seq.
- (d) The duties of the BZA shall be those set forth in the statute named above, and other responsibilities as may be required by the ordinances of the city or county.

#### Section 28.02 Powers and Duties of the BZA

The BZA shall have the following powers and duties:

- (a) Hear and decide all applications for special exceptions, special uses, contingent uses or conditional uses following the procedures of article 24.
- (b) The BZA shall have the power to grant variances from the provisions and requirements of this ordinance, in the following situations:
  - (1) A use variance under the provisions of, and after making the findings as required by IC 36-7-4-918.4 and section 28.11(a).
  - (2) A variance of developmental standards under the provisions of, and after making the findings as required by IC 36-7-4-918.5 and section 28.11(b).
- (c) Hear and determine appeals from and review any order, requirement, decision, or determination made by the enforcement official or any other official or administrative board charged with the enforcement of this ordinance. In exercising its powers, the BZA may reverse, affirm or modify the order, requirement, decision, or determination appealed from. For this purpose, the BZA has all the powers of the official or administrative board from whom the appeal is taken.

#### Section 28.03 Officers and Employees

- (a) A chairperson and vice chairperson for each BZA shall be appointed consistent with IC 36-7-4-912.
- (b) A secretary and employees may be appointed consistent with IC 36-7-4-913.

**Section 28.04 Meetings**

- (a) The BZA will meet as necessary to carry out the duties under this ordinance. At the yearly organizational meeting, the BZA will establish dates and times for meetings for the current year. The location of the meeting shall be set by the BZA. If the date of a regular meeting falls on a legal holiday, or if it is impossible to conduct the meeting at that time or place, the chairperson may set an alternate date, time, or place for the regular meeting or may cancel the meeting with the consent of the majority of the members of the BZA.
- (b) Special meetings may be called by the chairperson or two (2) members of the BZA upon written request to the secretary. The secretary will notify all members at least three (3) days prior to the special meeting. Any special meeting must comply with the notice requirements of I.C. 5-14-1.5.
- (c) The agenda shall list all items to be considered by the BZA at the regular or special meeting.
- (d) The chairperson of the BZA shall preside over meetings and hearings, decide questions of order, subject to appeal by BZA members, and preserve decorum in the meeting room.
- (e) The secretary of the BZA shall keep minutes of its proceedings and record the vote on all actions taken. The BZA shall also make written findings of fact in all cases heard by it.

**Section 28.05 Official Action; Discussion and Voting**

- (a) A majority of the members of the BZA shall constitute a quorum. Action of the BZA shall not be official unless it is authorized at a regular or properly called special meeting by a majority of the entire membership of the BZA.
- (b) At the conclusion of a public hearing on any petition requesting a variance, a special exception or special use, any member of the BZA may make any of the following motions with respect to the petition requesting a variance, special exception or special use to:
  - (1) Grant the request, as requested;
  - (2) Partially grant the request, or with limitations;
  - (3) Grant the request, but subject to certain conditions as enumerated in the motion;
  - (4) Deny the request; or
  - (5) Table the request until a future meeting.
- (c) If any such motion is seconded, and then receives the affirmative vote of a majority of all of the members of the BZA, and not just a majority of those present and voting, the adoption of the motion will be considered to be a decision of the BZA. If any such motion fails to receive an affirmative vote by a majority of all of the members of the BZA, then the motion fails, but the BZA will not have made a final decision regarding the petition before it.
- (d) If none of the above motions are made, or if made and seconded, fails to be approved, and if no other motion to dispose of the pending petition is made, then without any motion being made or seconded, the chairman shall declare that there is a motion before the board to grant a variance, special exception or special use as requested. Then, after permitting discussion on that motion, the chairman shall then submit this motion to a roll call vote. If the motion is approved by a majority of the members of the BZA, then the petition for a variance, special exception or special use is granted as requested. If the motion fails to receive an affirmative vote of a majority of the members of the BZA, then the petition is denied. In either case, the BZA will then have made a final decision on the petition before it.

- (e) Voting by the BZA shall be by roll call vote of the members. All members present shall vote on every question unless they are permitted to abstain by the presiding officer.
- (f) No member of the BZA shall participate in a hearing, discussion or decision of the BZA in which the member: 1) is biased or prejudiced or otherwise unable to be impartial; or 2) has a direct or indirect financial interest in the outcome of the zoning decision. A member shall declare his or her known conflict of interest. The BZA shall enter into its records the fact that the member has this disqualification, and the name of the alternate member, if any, who participates in the hearing in place of the regular member.
- (g) In the event a majority vote of the BZA cannot be achieved due to absences, permitted absenteeism, or disqualifications, the matter shall be rescheduled for the next regular meeting at the request of any BZA member, a petitioner, or a remonstrator.
- (h) The final disposition of any case shall be in the form of a findings of fact of the BZA, together with any modification, specification, or limitation which it makes.

#### **Section 28.06 Minutes and Records**

- (a) The Secretary of the BZA shall prepare and maintain minutes of its meetings. The minutes shall include the vote of each member on each question presented, or indicate that the member is absent, abstaining with permission, or not voting because of a disqualification.
- (b) The minutes of BZA meetings and all records shall be filed in the office of the BZA and are public records, as defined by I.C. 5-14-3.
- (c) The minutes shall be presented to the BZA for approval at the next succeeding regular meeting. When approved, the minutes shall be signed by the Chairperson and attested by the Secretary.

#### **Section 28.07 Public Hearings**

- (a) All regular special meetings and hearings of the BZA shall be open to the public, and all petitions acted on by the BZA at these meetings shall constitute a public hearing thereon.
- (b) The applicant or his or her agent must appear before the BZA in order to present a petition. Failure to appear can cause the petition to be dismissed subject to the BZA's discretion. A petition continued more than once can be dismissed by the BZA or upon request by a remonstrator.
- (c) The applicant may be granted a continuance of a public hearing for which a petition is scheduled but not acted upon and which has had a notice issued and published. The Chairperson or his or her designated representative may continue a hearing for the first time if the applicant requests a continuance at least 24 hours in advance of any scheduled public hearing. Any other additional continuances must be made before the BZA. These requests may be granted at the BZA's discretion upon the determination of good cause. The BZA may further waive notice requirements. If any additional notice for the continuance is necessary, the applicant shall bear responsibility for notice.
- (d) A remonstrator may be granted a continuance which shall be made at the public hearing. No further notice is necessary if the hearing is rescheduled at that time. The continuance shall be based on cause as determined by the BZA.
- (e) The BZA may continue a public hearing or defer decision upon an application to a subsequent public hearing. At the subsequent hearing the BZA may not consider any additional evidence unless all parties are given equal opportunities to present additional evidence as necessary within the discretion of the BZA.

- (1) Any applicant or petitioner may withdraw his or her petition at any time prior to the presentation of any evidence on application or petition as described in division (e)(1). The applicant may not refile the petition for three months after a withdrawal. After the beginning of presentation of evidence on the application or petition, the application or petition shall not be allowed to be withdrawn without unanimous consent of the BZA.
- (2) After the beginning of presentation of evidence, the petitioner or applicant may move for a dismissal of his or her petition. In that event, the petition dismissed shall be considered the same as denial of the petition. In either event, the applicant may not refile the petition for 12 months after dismissal or denial.
- (3) No further notice is necessary if the hearing is rescheduled at that time.

### **Section 28.08 Rules and Procedures**

- (a) The BZA may adopt any rules and procedures necessary to effectuate the intended purposes of this Title concerning conduct of business and for filings and hearings on applications for use, variance, special exception, or appeal.
- (b) For the purpose of this title, all provisions enacted governing the conduct of hearings and the filing of applications and not in contradiction with I.C. 36-7-4 et seq. may be amended from time to time by the BZA, as herein provided. The BZA may further adopt any additional rules governing procedures as it deems necessary.
- (c) The BZA may make amendments to the rules and procedures at the regular scheduled meeting.
- (d) The BZA may suspend, by unanimous consent of all the BZA members present, rules and procedures as they deem necessary for the appropriate conduct of any hearing.

### **Section 28.09 Variance, Use, Exception and Appeal Procedure**

- (a) Every petitioner or applicant for an administrative appeal, special exception or variance of use or of developmental standards shall file a petition stating the reasons for the petition or application and the location of the property affected.
  - (1) Every petition for a special exception or variance of use or of developmental standards shall be filed with the Secretary no later than 15 days prior to its consideration by the BZA at the next regular scheduled BZA meeting.
  - (2) Any appeal of an administrative decision shall be filed no later than 15 days from the date of the decision appealed and shall be heard at the BZA's next regular scheduled meeting.
- (b) An application for an administrative appeal, special exception or variance of use or of developmental standards should be signed by the owner of record of the real estate which is the subject matter of the application. If the applicant is other than the owner of record of the subject real estate, the applicant shall describe on the application the nature of his or her interest thereon and sign the same along with the owner of record. Only final decisions of the BZA may be appealed to the appropriate civil court as permitted by statute.

### Section 28.10 Notice Requirements

- (a) Any notice of an application or petition for an administrative appeal, special exception or variance of use or of developmental standards shall include at least the following items:
- (1) General location, legal description, and address of the property affected;
  - (2) Nature of the request concerning the administrative appeal, special exception or variance of use or of developmental standards applied for; and
  - (3) Date and time of the public hearing thereon.
- (b) For the purpose of I.C. 36-7-4-920(b), any person who is the owner of abutting property as well as any adjacent party, as defined by this title, shall be entitled to specific notice of the application for special exception or variance of use or of developmental standards.
- (c) The applicant for the administrative appeal, special exception or variance of use or of developmental standards shall be responsible for placing publication or notice of the application or petition as scheduled for public hearing. The notice shall be published pursuant to the requirements of I.C. 36-7-4-900 and I.C. 5-14-1.5. Publication shall be 10 days prior to the regular meeting or public hearing on the petition or application.
- (d) The applicant or petitioner shall be required to provide to the BZA proof of mailing or receipt of notice of all abutting or adjacent property owners being mailed certified return receipt requested no less than 10 days prior to the date of the public hearing. The applicant may also file notice, personally signed, or delivered to the adjacent parties, and this notice shall be signed by the adjacent parties.
- (e) Prior to presentation of the petition the applicant shall provide an affidavit and listing of all owners of record considered as abutting or adjacent property owners according to the real estate master file maintained by the County Auditor, as well as a copy of the notice mailed.
- (f) Before approval of a variance in the Airport Overlay District, involving a structure regulated under IC 8-21-10 may become effective, the BZA must have received:
- (1) A copy of:
    - a. The permit for the structure issued by the Indiana department of transportation; or
    - b. The Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and
  - (2) Evidence that notice of the filing of the petition for such a variance was delivered to the La Porte Municipal Airport Authority Board and the Michigan City Board of Aviation Commissioners, as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

### Section 28.11 Variance

- (a) **Use Variance.** Unless other findings are required by this Ordinance or State Law, the BZA may approve or deny variances from the use provisions of the zoning ordinance only upon a findings of fact that support the following:
- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
  - (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

- (3) The need for the variance arises from some condition peculiar to the property involved;
  - (4) The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
  - (5) The approval does not interfere substantially with the Comprehensive Land Development Plan.
- (b) **Development Standards Variance.** Unless other findings are required by this Ordinance or State Law, the BZA may approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance only upon a findings of fact that support the following:
- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
  - (2) The use and value of the area adjacent to the property will not be affected in a substantially adverse manner; and
  - (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Practical difficulties shall result from exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. The variance shall be necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district.

### Section 28.12 Commitments and Conditions Authorized

- (a) Prior to granting any special exception or variance of use or of developmental standards, a contingent use or conditional use, the BZA may prescribe appropriate conditions and/or commitments pursuant to I.C. 36-7-4-1015, which may be required in connection with the approval of the BZA of any such request. All conditions and/or commitments must be in writing and shall be recorded in the Office of the County Recorder and shall then be binding on all subsequent owners or any other person who acquires an interest in the parcel. Conditions and/or commitments may be modified or terminated only by the plan commission or board of zoning appeals after public hearing and proper notice pursuant to these rules and as set forth in I.C. 36-7-4-1015.
- (1) For the purpose of I.C. 36-7-4-1015(e), the BZA or any person claiming to be adversely affected by any commitment is entitled to enforce the commitment.
  - (2) A commitment shall be created by the owner of the property by affixing his or her signature to a written statement of the terms of the commitment. The commitments shall be approved by the BZA and the same recorded with the La Porte County Recorder's Office by the petitioner prior to any variance taking effect.
  - (3) A commitment may be modified or terminated only by a decision of the BZA made at a public hearing after notice is given in accordance with the requirements set forth in this title.
  - (4) If any person fails to abide by a commitment, that person commits a violation of this ordinance. The commitment shall be enforced in accordance with the provisions of article 26. Any violation of any commitment for which a variance has been granted shall constitute a nullification of that variance.
- (b) In granting a special exception or variance of use or of developmental standards, the BZA may also prescribe reasonable conditions or safeguards which it deemed reasonable.
- (c) The violation of any specified conditions or commitment required as a part of granting a special exception or variance of use or of developmental standards will serve as a voidance of the special

exception or variance of use or of developmental standards upon issuance of a stop order by the BZA or its designated representative.

### **Section 28.13 Approval Period**

The approval by the Board of Zoning Appeals of a special exception of use or variance of use shall expire one year from the date of issuance unless such use is initiated within one year from the date of approval. In the case of an approved variance of developmental standard, the variance shall expire one year from the date of issuance unless a building permit has been obtained pursuant to section 23.04 of this Joint Zoning Ordinance. The Board of Zoning Appeals may extend the deadline mentioned above upon application and good cause.

### **Section 28.14 Appeal**

Any decision of the Board of Zoning Appeals may be appealed to the circuit court or any superior court sitting in the county in the manner provided for by IC 36-7-4-1003 et seq., or any amendment thereto.

(This page intentionally left blank)